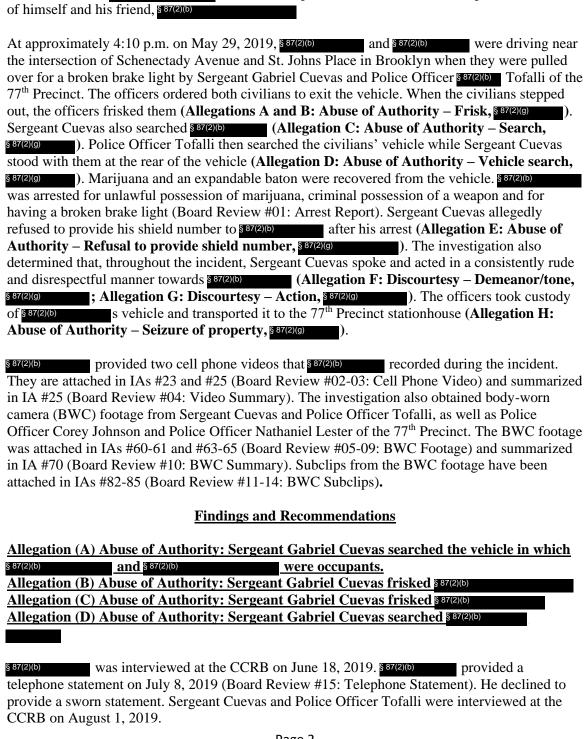
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☐ F	orce	$\overline{\mathbf{V}}$	Discourt.	U.S.	
Owen Godshall		Squad #2	201904945	☑ A	buse		O.L.	☐ Inju	ry
Incident Date(s)		Location of Incident:		Pre	ecinct:	18	Mo. SOL	EO SO	OL
Wednesday, 05/29/2019 4:10 PM		Schenectady Avenue a Place	and Saint Johns		77	11	/29/2020	7/16/20	021
Date/Time CV Reported		CV Reported At:	How CV Reported:	D	ate/Time	Rece	eived at CC	RB	
Fri, 06/07/2019 4:14 PM		CCRB	Phone	F	ri, 06/07/	2019	4:14 PM		
Complainant/Victim	Type	Home Addr	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. SGT Gabriel Cuevas	02226	945633	077 PCT						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. POM Andrew Tofalli	26431	955584	077 PCT						
Officer(s)	Allegatio	on			Inve	estiga	tor Reco	nmendati	ion
A.SGT Gabriel Cuevas	Abuse: S	ergeant Gabriel Cuevas	s frisked § 87(2)(b)						
B.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas frisked § 87(2)(b)								
C.SGT Gabriel Cuevas	Abuse: S	ergeant Gabriel Cuevas	s searched § 87(2)(b)						
D.SGT Gabriel Cuevas	Abuse: S which soccupant		s searched the vehicle ((2)(b)	in were					
E.SGT Gabriel Cuevas		ergeant Gabriel Cuevas mber to § 87(2)(b)	s refused to provide h	is					
F.SGT Gabriel Cuevas	Discourte to § 87(2)(b)	esy: Sergeant Gabriel C	Cuevas spoke discourt	eousl	у				
G.SGT Gabriel Cuevas	Discourte toward § 8	esy: Sergeant Gabriel C	Cuevas acted discourte	eously	7				
H.SGT Gabriel Cuevas	Abuse: S property.	ergeant Gabriel Cuevas	s seized § 87(2)(b)	:	s				

Case Summary

filed this complaint with the CCRB via telephone on behalf



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CCRB Case # 201904945

On June 7, 2019, \S 87(2)(b)

It is undisputed that the brake light on strictles are vehicle was broken at the time of the incident. Sergeant Cuevas and Police Officer Tofalli pulled strictles and strictles and strictles and strictles and strictles are vehicles and strictles approached the civilians' vehicle, with Police Officer Tofalli going to the driver's side and Sergeant Cuevas going to the passenger's side. Police Officer Tofalli ordered both civilians to exit the vehicle. When the civilians stepped out, Police Officer Tofalli entered the vehicle and searched its passenger cabin. He recovered an expandable baton from the driver's door panel. was arrested and both he and his vehicle were transported to the 77th Precinct stationhouse. There, Police Officer Tofalli conducted a further search of the vehicle. During one of Police Officer Tofalli's two searches, marijuana was recovered from the vehicle.
stated that at the time his vehicle was pulled over, there two used-up butts from marijuana cigarettes sitting in an ashtray that he stored in the trunk. He had smoked the cigarettes two days prior to the incident, but denied having smoked any further marijuana since then. He denied that he had consumed any illicit substances before the incident or that he was intoxicated or impaired. He was not aware of \$\frac{807(2)(0)}{207(2)(0)}\$ using any illicit substances or being impaired at the time. He denied that there was any other marijuana in the vehicle besides the two marijuana cigarette butts. He denied that there was any odor of marijuana emanating from anywhere inside his vehicle. All four of the windows on \$\frac{807(2)(0)}{207(2)(0)}\$ s vehicles were rolled down. When \$\frac{807(2)(0)}{207(2)(0)}\$ was ordered to exit the vehicle, he told Police Officer Tofalli that he did not consent to let his vehicle be searched. He made no mention of being frisked or searched when he exited the vehicle and denied that officers searched his person until later, when he was transported to the 77th Precinct stationhouse. \$\frac{807(2)(0)}{207(2)(0)}\$ did not watch Police Officer Tofalli as he searched the vehicle's passenger and did not know the extent of Police Officer Tofalli's search, but he denied seeing Police Officer Tofalli enter the trunk. He did not see Police Officer Tofalli remove anything from his vehicle beyond his baton during the vehicle search by the bus stop. After he was lodged at the stationhouse, \$\frac{807(2)(0)}{207(2)}\$ was informed that marijuana was recovered from his vehicle. Because the only marijuana in the vehicle was in the trunk, and the trunk was not searched by the bus stop, \$\frac{807(2)(0)}{207(2)}\$ concluded that officers had conducted a second vehicle search after transporting his vehicle to the stationhouse. He did not witness any such searches himself.
denied that either he or \$87(2)(b) had any marijuana with them at the time of the incident. He denied seeing officers remove marijuana from the vehicle at any point. He did not state whether there was any odor of marijuana emanating from the vehicle. When \$35(2)(b) exited the vehicle, Sergeant Cuevas frisked him by patting the exterior of his jacket and pants pockets. He denied that Sergeant Cuevas reached into his pockets or took anything from him. \$87(2)(b) was not arrested and therefore was not at the stationhouse when the second vehicle search was conducted.
Sergeant Cuevas stated that \$87(2)(5) s vehicle was pulled over solely due to its broken light. He noted that all of the windows on \$87(2)(5) s vehicle were rolled up when he and Police Officer Tofalli approached it. Police Officer Tofalli asked \$87(2)(5) to roll the windows down. Once he did, Sergeant Cuevas detected an odor of burning marijuana emanating from inside the vehicle. He did not make any other observations about the vehicle or its occupants Page 3

to suggest that there was marijuana or other contraband in the vehicle. Sergeant Cuevas directed Police Officer Tofalli to have the civilians exit the vehicle so that they could search it for marijuana. Sergeant Cuevas stated that he and Police Officer searched both civilians when they exited the vehicle. He denied that they were frisked. These searches took place at the rear of the vehicle, not the side of the vehicle. He did not recall which officer searched which civilian or what specific parts of the civilians' bodies were searched. The searches were conducted to investigate the odor of marijuana emanating from the vehicle. Nothing was recovered during these searches. Police Officer Tofalli then searched the passenger cabin of §87(2)(b) vehicle. Sergeant Cuevas did not see what specific areas within the vehicle Police Officer Tofalli searched. Police Officer Tofalli retrieved an expandable baton, a bag containing marijuana, and a lit marijuana cigarette from the passenger cabin. Sergeant Cuevas did not see where in the vehicle Police Officer Tofalli found these objects. He did not know how much marijuana was in the bag and did not describe the bag's appearance. No other contraband was located. §87(2)(b) subsequently arrested for possession of a weapon and possession of marijuana. Because s vehicle was not stopped in a valid parking spot, it was transported to the stationhouse for safekeeping. He did not know if any further search was conducted on the vehicle at the stationhouse, but noted that it would have been standard procedure for Police Officer Tofalli, as the arresting officer, to conduct an inventory search of the vehicle once at the stationhouse.

Police Officer Tofalli also stated that [3] was pulled over solely due to his broken light. He did not recall if \$87(2)(b) s vehicle's windows were rolled up or down when he and Sergeant Cuevas stopped it, but recalled that they were rolled down by the time he and Sergeant Cuevas approached it. Sergeant Cuevas told Police Officer Tofalli that he detected an odor of marijuana emanating from the vehicle. Police Officer Tofalli did not detect the odor himself at that time. He noted that he was recovering from a cold at the time and that the resulting congestion had limited his sense of smell. He did not make any independent observations about the civilians or their vehicle that suggested that there was marijuana inside. Police Officer Tofalli, at Sergeant Cuevas' direction, ordered the civilians to exit the vehicle. When §87(2)(b) exited, Police Officer Tofalli frisked him around his waistband and ankles. He did so because he anticipated that Sergeant Cuevas would stand with the two civilians at the rear of the vehicle while he searched its interior, and he wanted to be sure that \$87(2)(b) did not have a weapon that he could use to threaten Sergeant Cuevas. He had no specific suspicion that \$87(2)(b) was armed at the time. He did not know if Sergeant Cuevas frisked or searched §87(2)(b) Both civilians were moved to the rear of the vehicle. Police Officer Tofalli then searched the passenger cabin to look for marijuana. He searched the vehicle's seats, floors, center console and door panels. He did not recall if he searched the glove compartment or a bag inside the vehicle. While Police Officer Tofalli had not detected any odor from outside the vehicle, once he got inside, he detected the odor of marijuana. He did not recall if it was the odor of burning marijuana. Police Officer Tofalli retrieved the expandable baton from the driver's door panel, but found no marijuana at that time. He estimated that he searched the passenger cabin for about two minutes. Later, when § 87(2)(b) s vehicle was transported to the stationhouse, Police Officer Tofalli searched it again in the stationhouse parking lot. No other officers assisted him. During the follow-up search, he found a quarter-sized Ziploc bag containing an unknown amount of marijuana and a partially-burnt marijuana cigarette underneath the driver's seat. He acknowledged that he had looked under the front seat during his initial search of the vehicle. When asked why he had not noticed the marijuana during the first search, Police Officer Tofalli

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stated that he had given the area only a brief glance during the first search and did not thoroughly examine it.
Police Officer Tofalli prepared \$87(2)(b) s arrest report (Board Review #1: Arrest Report). The narrative states that there was a strong odor of marijuana emanating from \$87(2)(b) s vehicle when the officers approached it. The vehicle was searched, and a baton was recovered from within. A subsequent search of the vehicle after \$87(2)(b) s arrest recovered a bag of marijuana and burnt marijuana cigarettes.
Police Officer Tofalli prepared property vouchers for sarcest (Board Review #16: Property Vouchers). A cellphone, headphones, watch and jewelry were vouchered for safekeeping. An expandable baton, a small Ziploc bag containing marijuana and a burnt marijuana cigarette were vouchered as arrest evidence.
Subclips from Sergeant Cuevas' and Police Officer Tofalli's BWC footage are attached in IAs #83 and #84, respectively (Board Review #12-13: BWC Subclips). These subclips show Police Officer Tofalli standing on the driver's side of \$87(2)(b) s vehicle and Sergeant Cuevas standing on the passenger's side. Sergeant Cuevas' BWC shows that he patted \$87(2)(b) around his torso when \$87(2)(b) exited the vehicle. \$87(2)(b) is wearing a vest. Sergeant Cuevas reaches between the vest and \$87(2)(b) s shirt. Police Officer Tofalli's BWC shows him patting \$87(2)(b) around his torso and legs when he exited the vehicle.
§ 87(2)(g)
The odor of marijuana emanating from a vehicle during a valid traffic stop provides officers with probable cause to search the vehicle's occupants as well as the vehicle itself. <u>People v. Smith</u> , 66 A.D.3d 514 (App. Term, 1 st Dept., 2009) (Board Review #17: Legal Reference).
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Allegation (E) Abuse of Authority: Sergeant Gabriel Cuevas refused to provide his shield number to \$87(2)(b)
It is undisputed that when the officers placed \$87(2)(b) in handcuffs, \$87(2)(b) asked Sergeant Cuevas for his shield number. Sergeant Cuevas did not immediately respond to this request.
stated that when he asked Sergeant Cuevas for his shield number, Sergeant Cuevas responded by telling \$87(2)(b) that he was under arrest. Sergeant Cuevas did not state his shield number, but \$87(2)(b) was able to read the number directly from his shield.
Sergeant Cuevas also stated that \$87(2)(b) requested his shield number while being handcuffed. Sergeant Cuevas replied that he would provide his shield number later, when they arrived at the stationhouse. Sergeant Cuevas did eventually provide \$87(2)(b) with his shield number at the stationhouse, though he did not recall the exact time he provided it. He did not explain what, if anything, prevented him from providing his shield number at that time.
Police Officer Tofalli did not recall \$87(2)(b) asking Sergeant Cuevas for his shield number at any point. He did not recall Sergeant Cuevas providing his shield number to \$87(2)(b) either at the scene of the arrest or later at the stationhouse. He was not aware of Sergeant Cuevas refusing to provide his shield number during this incident.
A subclip from Sergeant Cuevas' BWC footage is attached in IA #85 (Board Review #11: BWC Subclip). It takes place while \$\frac{87(2)(0)}{2}\$ is being handcuffed. \$\frac{87(2)(0)}{2}\$ asks Sergeant Cuevas, "Can I get your badge number, please? Two two" Sergeant Cuevas states, "Alright, he's under arrest. You're under arrest. For the weapon. For the weapon." The officers' BWC footage continues until \$\frac{87(2)(0)}{2}\$ is transported to the stationhouse and lodged in a holding cell. Sergeant Cuevas is not heard providing his shield number during that time (Board Review #05-09: BWC Footage).
NYPD Patrol Guide procedure 203-09 states that officers must courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests them to do so (Board Review #18: Legal Reference).
§ 87(2)(g)

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Allegation (F) Discourtesy: Sergeant Gabriel Cuevas spoke discourteously to \$87(2)(b) Allegation (G) Discourtesy: Sergeant Gabriel Cuevas acted discourteously toward [8] 87(2)(b) stated that Sergeant Cuevas stood with him and §87(2)(b) at the rear of his vehicle while Police Officer Tofalli searched the interior. \$87(2)(6) tried to look towards the vehicle to observe Police Officer Tofalli's actions, but Sergeant Cuevas prevented him from doing so by grabbing the lapels of his jacket. Sergeant Cuevas then started "shaking" by his lapels and asking \$87(2)(b) if he was intoxicated or high. He then pulled s lapels, forcing § 87(2)(b) to bend over. § 87(2)(b) down on § 87(2)(b) injured and did not fall as a result of this action. Sergeant Cuevas stated that \$87(2)(b) appeared to be "agitated" throughout the incident. When he and Police Officer Tofalli first approached \$87(2)(b) s vehicle, \$87(2)(b) asked if the officers were harassing him. Sergeant Cuevas replied, "Yeah, it's harassment." When asked why he made this statement, he explained that he was only repeating §87(2)(b) words back to him. Later, when the civilians were brought to the rear of the vehicle and Police Officer Tofalli started searching the vehicle, \$27(2)(b) tried to shut one of his vehicle's doors. Sergeant Cuevas prevented him from doing so by grabbing §87(2)(6) his jacket. § 87(2)(b) tried several times to turn around and walk towards the vehicle. Sergeant Cuevas held him in place by his lapels. He denied that he pulled \$87(2)(b) his lapels. Sergeant Cuevas suspected that \$87(2)(5) might have been intoxicated because he kept trying to turn around despite Sergeant Cuevas telling him not to. Sergeant Cuevas did not make any other observations that caused him to suspect that § (2)(b) was intoxicated. Police Officer Tofalli did not recall Sergeant Cuevas telling \$87(2)(b) that he was being "harassing him." He did not pay attention to Sergeant Cuevas and §87(2)(b) s vehicle, so he did not see if Sergeant Cuevas grabbed \$87(2)(b) searching § 87(2)(b) by the lapels or pulled him down by his lapels. He did not recall Sergeant Cuevas asking if he was intoxicated. Police Officer Tofalli did not suspect that § 87(2)(b) intoxicated. A subclip from Sergeant Cuevas' BWC footage is attached in IA #82 (Board Review: BWC and § 87(2)(b) Subclip). It depicts the officers speaking to \$87(2)(b) while they were still s vehicle. § 87(2)(b) asks Sergeant Cuevas, "Are you guys harassing me right now?" Sergeant Cuevas replies, "Yeah, it's harassment. Step out the car." The cell phone video recorded by \$37(2)(5) is attached in IA #21 (Board Review #02: Cell Phone Footage). It begins after \$87(2)(b) and \$87(2)(b) were removed from their vehicle and moved to the rear. At 0:07 into the recording, Sergeant Cuevas asks § 87(2)(b) drunk?" \$87(2)(b) replies, "I'm not drunk." \$87(2)(b) looks over his left shoulder towards his vehicle, but does not walk towards it. At 0:30 into the recording, Sergeant Cuevas states, "Oh, I can't help now. Now, I can't help. Now that's a problem. Did you just see that?" He by his lapels and turns § 87(2)(b) towards him. Sergeant Cuevas asks, "Did you just see that? Yeah, a nightstick." He turns to face \$87(2)(b) He tells \$87(2)(b)

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states that his mightstick is not illegal. Sergeant Cuevas insists that it is, \$400 denies that he has a weapon with him. At 1:00 into the recording, Sergeant Cuevas tates, "You just said it or your own camera." \$400 states, "It's not a weapon." Sergeant Cuevas then turns \$400 states, "No, because I want you to turn to that camera. Because you're turning away from me." \$400 looks over his right shoulder towards his vehicle, but does not turn his body. Sergeant Cuevas states that he is concerned for his safety because a weapon was found in his vehicle. \$400 and \$400 both remark that it is absurd for Sergeant Cuevas to fear for his safety because he is an armed police officer. At 1:30 into the recording, Sergeant Cuevas asks, "Have you moved yet? Have you? Look what he keeps doing." \$400 replies that Sergeant Cuevas is holding \$400 and \$400	"Say that one more time to that camera right there and to the camera on my chest." \$87(2)(b)
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turn his body. Sergeant Cuevas states that he is concerned for his safety because a weapon was found in his vehicle. \$57200 and \$57200 both remark that it is absurd for Sergeant Cuevas to fear for his safety because he is an armed police officer. At 1:30 into the recording, Sergeant Cuevas asks, "Have you moved yet? Have you? Look what he keeps doing." Teplies that Sergeant Cuevas is holding \$77200 at 1:40 into the recording, Sergeant Cuevas pulls down on \$77210 at 1:40 into the recording, Sergeant Cuevas pulls down on \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas to store the down on the leans back upright. Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording, Sergeant Cuevas pulls \$77210 at 1:40 into the recording,	
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§ 87(2)(g)	
	§ 87(2)(g)

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§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
Allegation (H): Abuse of Authority: Sergeant Gabriel Cuevas seized 887(2)(b) property.
property.
It is undisputed that when \$87(2)(b) was initially pulled over, he stopped his vehicle in front of a bus stop. \$87(2)(b) s vehicle was taken into custody after his arrest and transported to the 77 th Precinct stationhouse. Both officers stated that \$87(2)(b) s vehicle was taken into custody because it would have blocked access to the bus stop if it was left in place.
When officers arrest the driver of a motor vehicle, they may remove the driver's vehicle if the vehicle is positioned in a manner that impedes the flow of traffic. New York v. Sullivan, 29 N.Y.2d 69 (1971) (Board Review #22: Legal Reference).
§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which \$87(2)(0) or \$87(2)(0) has been a party (Board Review #20: Civilian CCRB Histories).
- Sergeant Cuevas has been a member of service for eleven years and has been a subject in
 eight previous CCRB complaints and seventeen allegations, of which five were
 substantiated.
 - 201610447 involved substantiated allegations of refusal to provide name and/or shield number, frisk and stop. The Board recommended that he receive Command Discipline B. The NYPD imposed Command Discipline A.

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- 201804454 involved substantiated allegations of frisk and search. The Board recommended that he receive Command Discipline B. The NYPD has not yet imposed discipline.
- § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on August 28, 2018. The results will be included in the case file upon receipt.
- The criminal case resulting from \$87(2)(b) s arrest during this incident is still open. His next court date is scheduled for \$87(2)(b)
- According to the Office of Court Administration, neither \$87(2)(0) nor \$87(2)(0) has a history of convictions in New York City (Board Review #21: Civilian Conviction Histories).

Squad No.:			
Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date

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